

**SURVEILLANCE TESTING SERVICES AGREEMENT
(Government Entity)**

THIS SURVEILLANCE TESTING SERVICES AGREEMENT (“Agreement”), effective on the _____ day of _____, 20____ (“Effective Date”), is by and between Wichita State University, a Kansas public institution (“Lab”) and _____ (“Government”), referred individually as “party” and collectively as “parties.”

WHEREAS, Lab is a clinical laboratory certified under the Clinical Laboratory Improvement Act (“CLIA”) that provides laboratory services;

WHEREAS, Government desires to engage Lab to provide certain services as enumerated herein to persons in Government’s community (“Community Members”) as part of Government’s strategic preparedness and response plan to COVID-19, which includes securing the availability of COVID-19 testing capacity for government and private sector initiatives as designated by Government (those agencies, entities or other organizations undertaking initiatives to which Government is allocating a portion of its Processing Capacity shall hereafter be referred to as a “Designee “or “Designees”); and

WHEREAS, Lab desires to provide such Services, all upon the terms, conditions, and mutual promises hereinafter contained.

NOW, THEREFORE, in consideration of the premises above and the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Term. The term of this Agreement shall be one (1) year commencing on the Effective Date unless terminated earlier as provided herein (“Term”). This Agreement will automatically renew for successive one (1) year terms unless either party provides a written notice of non-renewal to the other party at least thirty (30) days prior to the end of the then-current Term.

2. Lab Services. Lab shall provide processing of specimens coordinated by Government or Designees for SARS CoV-2 (“Services”) for Community Members. Lab is not responsible for obtaining the specimens from Community Members. Lab shall process _____ specimens per week for the first _____ weeks, and gradually increase specimen processing to approximately _____ specimens per week (“Processing Capacity”). Government must coordinate the use of Processing Capacity among it and Designees and may request Lab to perform in excess of the Processing Capacity provided that Government provide advance written notice to Lab of the requested increase in Processing Capacity to allow Lab to determine the feasibility of such request. Within _____ days of Government’s request to increase Processing Capacity, Lab shall inform Government whether it can accommodate such request and the timeframe for implementation of the requested Processing Capacity. In connection with the Services and subject to availability, Lab shall provide Government and Designees specimen collection supplies (“Supplies”) to enable the Government or Designees to obtain specimens from Community Members. Government is responsible for ensuring that appropriately qualified, trained and supervised staff are utilized by Government and Designees for the accurate collection of specimens using the Supplies provided by Lab. Government shall follow, and shall ensure that all Designees follow, the protocol provided by Lab. The organization collecting the specimen (the “Collecting Organization”) ,the Community Member and the ordering provider, as applicable, from whom the specimen was collected will receive a link to a secure website to view and/or print the test results when the test results are available.

3. Specimen Drop-off. Government shall ensure that Government and Designees drops off all specimens at the Lab in accordance with the protocol provided by the Lab. Lab will only accept specimens

collected using the Supplies provided by Lab. Government and Designees may avail themselves of any of the drop-off methods listed in Appendix A. Lab shall use its best efforts to report test results within the time allotments identified in Exhibit A. Notwithstanding the foregoing, Government acknowledges and agrees that in no event will Lab guarantee that test results will be reported within the time allotments set forth in Exhibit A. Lab will notify the Collecting Organization of any specimens dropped off at the Lab that are deemed not suitable for processing.

4. Reporting. Lab shall be responsible for reporting to applicable federal or state health authorities regarding SARS CoV-2 test results. Government shall ensure that the Collecting Organization provides Lab with all necessary Community Member demographic information to enable Lab to meet such reporting obligations.

5. Government Responsibilities. Government will be responsible for the following, and shall ensure that each Designee strictly adheres to the following:

- a. obtaining and utilizing only Supplies provided by Lab for the collection of any specimen;
- b. providing all necessary information for any specimen dropped off at the Lab, including the individual's name, date of birth, telephone number, email address and county of residence and such other demographic information as may be necessary to enable Lab to meet applicable reporting obligations;
- c. notifying Lab at least twenty-four (24) hours in advance of any anticipated delivery of over 500 specimens collectively from Designees (Government requirement only);
- d. ensuring that all laboratory tests for Community Members are ordered by appropriately authorized healthcare providers and that a copy of the order is provided to Lab (Lab will accept a standing order for Community Members from an authorized healthcare provider);
- e. confirming that all Community Members properly register through the Lab portal and that all handwritten information on any specimen is legibly written in English;
- f. packaging specimens in accordance with specifications provided by Lab; and
- g. timely, same day submission of specimens to the Lab in accordance with the protocols provided by Lab.

6. Qualifications/Compliance with Laws/Regulations, Rules/Standards. At all times during the Term, Lab shall comply with all applicable laws, rules and regulations of the United States, the State of Kansas, and any other applicable states or governmental agencies in the performance of Services hereunder. Lab also agrees to evaluate existing and forthcoming Centers for Diseases Control and Prevention guidelines, as they become available, and incorporate them into the process and protocols as deemed appropriate by Lab.

7. Compensation.

- a. Government shall compensate Lab pursuant to the fee schedule attached hereto as Exhibit B. Government shall remit payment to Lab within thirty (30) days of the date of a Lab invoice for Services rendered hereunder. Should payment not be received within those thirty (30) days, Lab reserves the right to assess a one and one-half percent (1.5%) service

charge on any outstanding balance. If payment is not received in full within sixty (60) days of the date of the invoice Lab may, at its option, charge an additional two percent (2%) service charge on any outstanding balance. Provider shall be responsible for all collection or legal fees necessitated by lateness or default in payment.

- b. The parties acknowledge that the compensation payable hereunder is intended to compensate Lab for the services provided by Lab to Government and is not dependent upon the volume or value of any referral of patients by Government to Lab. Nothing herein shall be intended or implied to require the referral of any patient to Lab.
- c. In the event that either party, or a Designee, desires to submit claims to a third-party payor, including but not limited to government payors such as Medicare or Medicaid, the parties will determine the appropriate billing arrangement to ensure that no payor is double billed and that all applicable billing rules are followed.
- d. The parties acknowledge that the price paid by Government may reflect a discounted pricing arrangement that has been negotiated in an arms-length transaction between the Lab and Government. Lab shall fully and accurately report discounted pricing, if applicable, on the invoice, coupon or other statement submitted to Government. Government may request additional information from Lab to meet its reporting or disclosure obligations and Lab shall provide such requested information to Government within a reasonable time of such request. Government acknowledges that it may be required by law to disclose the actual cost (after taking into account discounts, rebates or any other price reductions) of any items purchased, leased or otherwise obtained and, on request, provide to the U.S. Department of Health & Human Services and other federal agencies, any invoices, coupons, statements, and other documentation reflecting such cost.

8. Indemnification. To the extent allowed by law, each party (each respectively an “Indemnitor”) shall indemnify, defend and hold harmless the other party and the other party’s respective affiliates, officers, directors, employees, contractors, and agents from and against any and all claims, suits, actions, proceedings, liabilities, damages, costs or expenses, including attorney fees and court costs (each a “Claim”) to the extent arising from (a) the breach of any warranty, representation or covenant in this Agreement and (b) the negligent acts or omissions or intentional misconduct by the Indemnitor or its officers, directors, employees, contractors, representatives or agents. The provisions of this section shall survive termination of this Agreement. Notwithstanding the foregoing, no provision of this Agreement will be given effect that attempts to require either party to defend, hold harmless, or indemnify the other party or any third party for any acts or omissions. The liability of both parties is defined under the Kansas Tort Claims Act (K.S.A. § 75-6101 et seq.).

9. Cooperation in the Event of a Claim.

- a. In the event that Government or Lab becomes aware of any alleged injury arising out of or relating to laboratory services provided under this Agreement, each party has a duty to give the other party written notice within fifteen (15) days containing the particulars sufficient to identify the name and address of the allegedly injured person, place and circumstances of the alleged incident, and the names and addresses of the available witnesses.
- b. Lab shall be entitled to receive notice of any lawsuit filed or written demand of a claim against Government related to the performance of services provided under this Agreement, within ten (10) days of receipt by Government of notice of such claim or lawsuit.

- c. Each of the parties shall cooperate with each other in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to any of the parties because of injury with respect to which insurance is afforded, and shall attend the hearings and trials and assist in securing evidence and obtaining the attendance of witnesses as is reasonably necessary.
- d. In the event any party is entitled to indemnity pursuant to Paragraph 8, the party entitled to indemnity shall, to the extent allowed by law, tender all defense responsibilities to the indemnifying party and its insurer(s), provided, however, the indemnifying party shall cause the party to be indemnified to be informed of the progress of any claim or litigation and the defense thereof and provided, further, that in the event such claim or action being defended by the indemnifying party or its insurer seeks monetary damages from the party to be indemnified which are not covered by or are in excess of the limits of the indemnifying party's professional liability insurance coverage, the party to be indemnified shall have the right at any time at its election (i) to assume its own defense at its own cost in which case the obligation to indemnify will be cancelled; or (ii) to participate in the defense of such claim in an advisory, non-decision making capacity in which case the obligation to indemnify will remain. Nothing herein shall be construed, however, as requiring the indemnifying party to defend, indemnify, or hold the party to be indemnified harmless from its own negligence or that of its employees.

10. Termination.

- a. For Cause. This Agreement may be terminated by either party at any time in the event of a breach of or noncompliance with any covenant, term or condition of this Agreement after the non-breaching party has provided written notice of such breach or noncompliance and the same remains uncured for fifteen (15) business days subsequent to the giving of such notice.
- b. For Convenience. Either party may terminate this Agreement without cause upon thirty (30) days' prior written notice to the other party.

11. Public Readiness and Emergency Preparedness Act. Notwithstanding anything to the contrary herein, Lab and Government each agree as follows:

- a. The parties hereto are authorized to engage in the activities set forth herein and to demonstrate compliance with the Public Readiness and Emergency Preparedness Act, 42 U.S.C. § 247d-6d ("PREP Act"), and its accompanying March 17, 2020, Declaration ("Declaration"), 85 Fed Reg 15198.
- b. The parties reasonably believe that they qualify as covered persons" using "covered countermeasures" to perform "recommended activities" under the PREP Act and are administering and using the "covered countermeasures" with respect to the population and geographic area identified in the Declaration.
- c. Government represents that it is a state or local public health and medical response agency or its delegate that has legal responsibility and authority for responding to the COVID-19 emergency.
- d. Government hereby authorizes Lab and their respective employees, contractors and others making use of their facilities to engage in the activities set forth herein. The parties agree

that such authorization is provided by Government only to the extent such authorization is required by the PREP Act and solely for the purpose of compliance with the PREP Act and Declaration.

12. Confidential Information. All terms set forth in the Agreement and information or data relating to the business or operations of any party to this Agreement acquired by any other party hereto in connection with this Agreement shall be treated as strictly confidential by the receiving party, and shall not, unless otherwise required by law, be disclosed by the receiving party without the prior written permission of the party hereto to whom the information in question relates. This provision shall survive termination of the Agreement.

13. Privacy and Security Compliance. The parties agree to maintain the privacy and security of any individually identifiable information received from or created for the other party in accordance with all relevant state and federal laws and regulations. This provision shall survive termination of this Agreement. Government shall ensure that all Designees comply with the requirements set forth in this Section 13.

14. Applicable Law. The parties agree that the validity, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Kansas.

15. Independent Contractor. Lab's Services hereunder are to be rendered in the capacity of an independent contractor of Government. Neither party has authority to enter into contracts or assume any obligations for or on behalf of the other party or to make any warranties or representations for or on behalf of the other party.

16. Assignment. Neither party may assign its rights nor subcontract any of its obligations hereunder to a third party without the other party's advance written consent.

17. Notices. All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either Party to the other shall be **IN WRITING** and sent by certified mail or overnight traceable delivery and addressed as follows, unless any other person or address may be designated by notice from one Party to the other:

If to Wichita State University:

Attn: Molecular Diagnostic Laboratory
Wichita State University
1845 Fairmount Street
Wichita, Kansas 67260

With a copy to:

Attn: General Counsel
Wichita State University
1845 Fairmount Street
Wichita, KS 67260-0205

If to GOVERNMENT:

Attn: _____

With a copy to (optional):

18. Entire Agreement; Amendment. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, understandings and agreements. No amendment of this Agreement will have any force or effect unless such amendment specifically indicates it is a modification of this Agreement, is in writing and signed by authorized representatives of both parties.


19. Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining portion of the provision and all other provisions shall not be affected or impaired.
20. Waiver. Any waiver shall be in writing and provided to all other Parties. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Party hereto.
21. Arbitration, Damages, Warranties. Notwithstanding any language to the contrary, no interpretation of this contract shall find that Lab has agreed to binding arbitration, or the payment of damages or penalties. Further, Lab does not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to Lab at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument. A copy, electronic version or facsimile of any such document shall be as effective as an original.
23. Electronic Signatures. The parties agree that this Agreement may be signed with electronic signatures. Whenever either party executes an electronic signature on this Agreement, it has the same validity and meaning as a handwritten signature and shall be legally binding equivalent. The parties agree that neither party will, at any time in the future, repudiate the meaning of an electronic signature or claim that an electronic signature is not legally binding.
24. No Third Party Beneficiaries. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties hereto, and that the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.
25. Headings. The section headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.
26. Designee Paperwork. Government shall ensure that each Designee complete and execute any and all forms required by Lab to be completed. Lab must receive a copy of the fully completed and executed forms prior to processing specimens from a Designee.
27. Force Majeure. WSU shall not be liable to Government for any failure or delay caused by events beyond WSU's reasonable control, including, without limitation, a failure to furnish necessary information, sabotage, failures or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials, or equipment, technical failures, epidemics, or pandemics (including, but not limited to COVID-19 (in each case, a "Force Majeure Event"), provided WSU notifies Government as soon as possible of any Force Majeure Event and uses its reasonable best efforts to mitigate and remedy the adverse effects of such a Force Majeure Event. In the event said Force Majeure Event persists for longer than thirty (30) days, Government shall have the option to terminate this Agreement, without penalty.

[Intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement, or have caused this Agreement to be duly executed on their behalf, as of the Effective Date.

Wichita State University:

Government:

By: 

By: _____

Print Name: John S. Tomblin

Print Name: _____

Title: SVP Industry & Defense Programs

Title: _____

Date: 3.8.2021

Date: _____

EXHIBIT A

SCHEDULE FOR DELIVERY OF TEST RESULTS/DROP-OFF OPTIONS

Government and/or Designees may use any of the following methods to get specimens to the Lab for processing:

1. Daily drop off of specimens at the Lab (preferred and fastest method)
2. Return specimens via FedEx Express

Please note: if the Testing Entity uses FedEx Express Packing Services, test results will be delayed due to shipping timelines. For fastest turnaround on test analysis and results, Government and/or Designees are encouraged to drop off specimens at the Lab daily.

The following table provides an estimate of when Government and/or Designees can expect to receive test results. Lab shall use its best efforts to report test results to Government and/or Designees within the time allotments in this table. However, Government and/or Designees acknowledges and agrees that in no event will Lab guarantee that test results will be reported within the time allotments below. In the event that test results are scheduled to be given on a holiay observed by the State of Kansas, the test results shall be expected on the following business day after the holiday.

Receive Test Results

		Monday		Tuesday		Wednesday		Thursday		Friday		Saturday		
		Before 12 pm	After 12 pm	Before 12 pm	After 12 pm	Before 12 pm	After 12 pm	Before 12 pm	After 12 pm	Before 12 pm	After 12 pm	Before 12 pm	After 12 pm	
Drop Off Specimens	Monday	Before 12 pm	Specimen Drop-Off	→		Results Given								
		After 12 pm		Specimen Drop-Off	→		Results Given							
	Tuesday	Before 12 pm			Specimen Drop-Off	→		Results Given						
		After 12 pm				Specimen Drop-Off	→		Results Given					
	Wednesday	Before 12 pm					Specimen Drop-Off	→		Results Given				
		After 12 pm						Specimen Drop-Off	→		Results Given			
	Thursday	Before 12 pm							Specimen Drop-Off	→		Results Given		
		After 12 pm								Specimen Drop-Off	→		Results Given	
	Friday*	Before 12 pm									Specimen Drop-Off	→		Results Given
		After 12 pm	Results Given									Specimen Drop-Off	→	
	Saturday*	Before 12 pm	→		Results Given								Specimen Drop-Off	→
		After 12 pm												

* Results will be delivered the following week

EXHIBIT B

FEE SCHEDULE

The parties agree, for so long as CARES Act funding is available to Lab from the State of Kansas for the purpose of providing testing to residents of the State of Kansas, that the testing of Designated Persons will be at no cost to the Testing Entity (“Kansas CARES Funds”). Lab will notify Government and/or Designees at least five (5) days in advance of the date when Lab will no longer be able to use Kansas CARES Funds for the testing of Designated Persons (“Expiration Date”). After the Expiration Date, Government and/or Designees shall compensate Lab pursuant to the fee schedule set forth below.

TEST BILLING RATE	
Established Billing Rate: SALIVA, SalivaDirect™, No Extraction, PCR, Prevalence (One Target Test) <ul style="list-style-type: none">• Minimum order is one bundle of 50 SalivaDirect™ specimen collection. Kit, transportation from Testing Entity to Lab, and test analysis and results reporting through secure patient portal.• Cost of one bundle of 50 SalivaDirect™ kits is \$3,842.50 (50 kits x \$76.85 each).	\$76.85
Established Billing Rate: SWABS, Thermo Fisher Full Extraction PCR (Three Target Test) <ul style="list-style-type: none">• Minimum order is one bundle of 50 TaqPath™ specimen collection kit, transportation from Testing Entity to Lab, and test analysis and results reporting through secure patient portal.• Cost of one bundle of 50 TaqPath™ kits is \$4,887.50 (\$97.75 each).	\$97.75

Note: Test Billing Rate is subject to change if costs increase or decrease